

AO 243
REV 6/82MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	MIDDLE DISTRICT, PENNA.
Name of Movant	RONALD PEPPERS	Prisoner No.	FX-6952
		Docket No.	1:00-CR-00105
Place of Confinement SCI-GREENE, 175 175 PROGRESS DRIVE, WAYNESBURG, PENNSYLVANIA, 15370			
(include name upon which convicted)			
UNITED STATES OF AMERICA		v. RONNIE PEPPERS	
		(full name of movant)	

MOTION

- Name and location of court which entered the judgment of conviction under attack U.S. DISTRICT COURT, MIDDLE DISTRICT, HARRISBURG, PENNSYLVANIA
- Date of judgment of conviction MAY 9, 2003
- Length of sentence 15 yrs.
- Nature of offense involved (all counts) FELONY INFORMATION WITH ONE COUNT OF POSSESSION OF A FIREARM BY A PREVIOUSLY CONVICTED PERSON IN VIOLATION OF 18 U.S.C. §922(g)(1), UNDER §924(e).
- What was your plea? (Check one)
 - (a) Not guilty ☐
 - (b) Guilty ☒
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

SINGLE COUNT INFORMATION
- Kind of trial: (Check one)
 - (a) Jury ☐
 - (b) Judge only ☒
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

FILED
HARRISBURG, PA

NOV 03 2005

MARY E. D'ANDREA, CLERK
Per RTH

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9. If you did appeal, answer the following:

(a) Name of court U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT(b) Result AFFIRMED(c) Date of result APRIL 21, 2004

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court SUPREME COURT OF THE UNITED STATES(2) Nature of proceeding PETITION FOR WRIT OF CERTIORARI(3) Grounds raised WHETHER §922(g)(1) AN UNCONSTITUTIONAL ENCROACHMENT
ON THE STATES' POLICE POWER?(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒(5) Result DENIED(6) Date of result OCTOBER 4, 2004

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding _____

(3) Grounds raised _____

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐(5) Result N/A

(6) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court N/A

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐(5) Result N/A

(6) Date of Result _____

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐(2) Second petition, etc. Yes ☐ No ☐N/A(3) Third petition, etc. Yes ☐ No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

THIS IS MY FIRST PETITION

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: CONVICTION OBTAINED BY USE OF EVIDENCE GAINED

PURSUANT TO AN UNCONSTITUTIONAL SEARCH AND SEIZURE.

Supporting FACTS (tell your story *briefly* without citing cases or law): I WAS PULLED OVER

IN MY VEHICLE BY A POLICE OFFICER WHO INITIALLY INDICATED

THAT THE STOP OCCURRED DUE TO MUD ON THE LICENSE PLATE

THEN LATER INDICATED IT OCCURRED DUE TO THE TEMPORARY TAG

ON THE LICENSE PLATE. THE OFFICER THEN AFTER ISSUING A

CITATION FOR MATTERS UNRELATED TO THE STOP, TOOK IT UPON

HER SELF WITHOUT PERMISSION TO SEARCH THE VEHICLE.

B. Ground two: _____

ACTUAL INNOCENCE

Supporting FACTS (tell your story *briefly* without citing cases or law): I DID NOT HAVE

ACTUAL POSSESSION OF THE FIREARM, NOR GIVEN THE LOCATION OF

THE FIREARM IN MY VEHICLE GIVE RISE TO CONSTRUCTIVE

POSSESSION ESPECIALLY SINCE IT WAS PLACED IN MY VEHICLE

WITHOUT MY CONSENT OR KNOWLEDGE AS THE INDIVIDUAL WHO PLACED

THE FIREARM IN MY VEHICLE INDICATED IN THEIR CONFESSION TO

POLICE.

C. Ground three: ILLEGAL SENTENCE

THE SENTENCE IS ILLEGAL BECAUSE IT EXCEEDS THE STATUTORY
LIMIT.

Supporting FACTS (tell your story *briefly* without citing cases or law): IN ORDER FOR ME TO

RECEIVE A SENTENCE EXCEEDING THE (10)TEN YEAR STATUTORY

LIMIT FOR POSSESSION OF AN FIREARM, THE FELONY INFORMATION

MUST CONTAIN THREE APPLICABLE PRIOR FELONY CONVICTIONS OF

A CRIME OF VIOLENCE. THE TRIAL COURT MUST TAKE AN CATEGOR-

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ICAL APPROACH, AND WAS REQUIRED TO GROUP PRIOR CONVICTIONS
TRIED BY THE SAME JUDGE ON THE SAME DAY UNDER SAME INDICTMENT.

D. Ground four: SELECTIVE PROSECUTION

~~UNDER THE PROSECUTION OF THE DISTRICT ATTORNEY~~

Supporting FACTS (tell your story briefly without citing cases or law): THERE ARE EXTENSIVE
SIMILAR SITUATED INDIVIDUALS (NON-AFRICAN AMERICAN) IN THE
MIDDLE DISTRICT OF PENNSYLVANIA WHO WERE ARRESTED BY STATE
AUTHORITIES FOR FIREARM OFFENSES AND CRIMES THAT VIOLATE
FEDERAL STATUTE(S) THAT WERE NOT FEDERALLY INDICTED.

** SEE ADDITIONAL PAGE FOR CONTINUATION OF GROUNDS **

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

TO PETITIONER'S RECOLLECTION, I DON'T BELIEVE PRIOR COUNSEL RAISED
ANY OF THE ISSUE(S)

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing DIDN'T HAVE A PRELIMINARY HEARING. THE MATTER WAS
A RESULT OF A RE-TRIAL.

(b) At arraignment and plea DANIEL SEIGEL OF THE FEDERAL PUBLIC DEFENDER'S
OFFICE 100 CHESTNUT STREET, SUITE 306, HBG., PA 17101

(c) At trial DANIEL SEIGEL-SAME-

(d) At sentencing Daniel Seigel -Same-

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E. Groun five: CONVICTION OBTAINED BY PLEA OF GUILTY NOT MADE VOLUNTARILY OR WITH THE UNDERSTANDING OF THE NATURE OF THE CHARGE AND CONSEQUENCES.

Supporting FACTS: I WAS LEAD TO BELIEVE THAT REGARDLESS OF WHETHER OR NOT ANOTHER INDIVIDUAL PREVIOUSLY CONFESSED TO THE CRIME CHARGED (e.g. PLACING A FIREARM IN MY VEHICLE WITHOUT MY CONSENT OR KNOWLEDGE) THAT I AM STILL LEGALLY RESPONSIBLE ALSO SOLELY UPON COUNSEL'S URGING I RELUCTANTLY PLEAD GUILTY.

F. Ground six: INDICTMENT BROUGHT IN BAD FAITH

Supporting FACTS: ASSISTED U.S. ATTORNEY CHRISTY FAWCETT STATED THAT AT THE TIME U.S. MARSHAL MICHAEL REGAN ENTERED INTO AN COOPERATION AGREEMENT WITH PETITIONER HE (REGAN) WAS NOT AWARE OF OTHER ALLEGED CRIMINAL ACTIVITY THAT PETITIONER WAS ALLEGEDLY INVOLVED IN, THEREFORE DECIDING TO INDICT ME ON A TWO AND A HALF YEAR OLD STATE CHARGE. IT IS ALSO SUBMITTED THAT THE STATE ACTED AS A SHAM FOR THE FEDERAL GOVERNMENT BY THE FEDERAL GOVERNMENT WITHHOLDING BRING FORTH AN INDICTMENT UNTIL AFTER PETITIONER COOPERATED WITH THE U.S. MARSHAL'S OFFICE.

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G. Ground seven: COOPERATION AGREEMENT VIOLATION

Supporting FACTS: PETITIONER COOPERATED WITH THE U.S. MARSHAL'S OFFICE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, THAT IN EXCHANGE FOR HIS COOPERATION HE WOULD NOT BE PROSECUTED AND THAT NO ACTION WOULD BE TAKEN AGAINST HIM FOR A 1997 FIREARM POSSESSION INCIDENT THAT FEDERAL AUTHORITIES WAS AWARE OF AND AGREED TO HONOR THE AGREEMENT.

H. Ground eight: CONVICTION OBTAINED BY A VIOLATION OF THE PROTECTION AGAINST DOUBLE JEOPARDY.

Supporting FACTS: ANY OFFENSE(S) ARISING OUT OF A SINGLE TRANSACTION CAN NOT BE MADE BASIS OF MULTIPLE PROSECUTIONS. IF A COOPERATION AGREEMENT IS ANALOGOUS TO A PLEA AGREEMENT THEN WHEN THE COOPERATION AGREEMENT WAS EXECUTED THAT ADJUDICATED THE PROSECUTION OF THE FIREARM POSSESSION CHARGE.

I. Ground nine: DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL (7 Cts.).

Supporting FACTS: COUNSEL WAS INEFFECTIVE FOR INCORRECTLY INFORMING PETITIONER THAT CHARGING FELONY INFORMATION APPROPRIATELY SET FORTH THE APPLICABLE PREDICATE TO APPLY

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18 U.S.C. § 924(e), TO PETITIONER. COUNSEL WAS INEFFECTIVE
FOR NOT CHALLENGING THE APPLICATION OF 18 U.S.C. § 924(e) TO
PETITIONER. COUNSEL WAS INEFFECTIVE FOR GIVING PETITIONER
INCOMPETENT ADVICE TO PLEAD GUILTY TO A CHARGE (FELON IN
POSSESSION OF AN FIREARM) THAT PETITIONER WAS INNOCENT OF
COMMITTING AND THE ONLY EVIDENCE IN THE CASE EXONERATE
PETITIONER. COUNSEL WAS INEFFECTIVE FOR GIVING PETITIONER
INCOMPETENT ADVICE DURING THE GUILTY PLEA COLLOQUY THAT
PETITIONER MUST CLAIM KNOWLEDGE OF THE PRESENCE OF THE FIRE-
ARM IN THE VEHICLE IN ORDER FOR THE TRIAL JUDGE TO ACCEPT
THE GUILTY PLEA EVEN THOUGH THE EVIDENCE SUGGEST OTHERWISE.
COUNSEL INEFFECTIVE FOR FAILING TO FILE A MOTION IN THE TRIAL
COURT TO DISMISS FIREARM POSSESSION CHARGE ON DOUBLE JEOPARDY
GROUND. COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE A MOTION
TO DISMISS FIREARM CHARGE ON THE BASIS THAT ANOTHER
INDIVIDUAL PREVIOUSLY CONFESSED TO THE CRIME CHARGED TO
PETITIONER. COUNSEL WAS INEFFECTIVE FOR FAILING TO CALL AS A
WITNESS DURING PETITIONER'S PRE-TRIAL HEARINGS WITNESSES WHO
CONTAINED FIRST HAND KNOWLEDGE OF THE EXTENT OF THE COOPERAT-
ION AGREEMENT WHO WERE KNOWN TO COUNSEL AT THE TIME OF THE
HEARINGS.

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(e) On appeal DANIEL SRIGEL -SAME-

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐ N/A

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

NOVEMBER 1, 2005

(date)



Signature of Movant